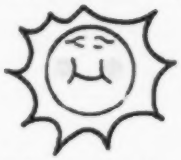
FOIP FOLIO

SASKATCHEWAN

November 2005

The 'Sun' Shines Brightly In Southern Saskatchewan



Our office had the opportunity to travel to Weyburn on November 18th to participate in a number of events during Confidentiality Awareness Week in the Sun Country Health Region. A highlight was the viewing of the locally produced video "*Protecting Your Health Information*". Who knew there was all of this thespian talent among the members of Mark Pettitt's Privacy Committee? The 32 minute video highlights what the Region will require of staff and clarifies the role of the Sun Country Privacy Officer. Also, a confidentiality contest was held region-wide inviting staff to come up with the best way to remind co-workers to protect patient confidentiality. The Region produced and distributed an attractive brochure to advertise Confidentiality Awareness Week that highlighted key themes of *The Health Information and Protection Act* (HIPA) and described the events scheduled for the week.

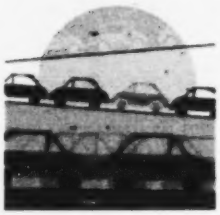
Sun Country Health Region has obviously discovered the truth of some excellent advice contained in a publication of The Conference Board of Canada (*The Privacy Challenge- From Compliance to Competitive Advantage - Briefing January 2004*). That publication for the private sector includes the following message that is equally applicable to public sector organizations in Saskatchewan:

> *"Getting buy-in from employees will be one of the initial challenges; making everyone aware of privacy and the importance of privacy protection will help to engage people upfront. Importantly,* ***organizations need to realize that the way they handle the personal information of employees will influence employee attitudes toward protecting the personal information of customers****."*

Somebody Must Be Looking At www.oipc.sk.ca

As we mark the 2nd anniversary of our full-time office in Saskatchewan, we note that since we created our website, www.oipc.sk.ca, in January 2004 there have been 102,052 hits. We try to ensure there is always fresh content on the website. If there are other kinds of information you would like to see on the website, please let us know by contacting Candace Malowany at (306) 787-8350 or webmaster@oipc.sk.ca.

Past Damage To Vehicles - Not Personal Information



In Report F-2005-007 the Office of the Information and Privacy Commissioner (OIPC) concluded that the detailed claims history of a vehicle registered in Saskatchewan is not "personal information" within the meaning of Part IV of *The Freedom of Information and Protection of Privacy Act* (FOIP) once identifying information is severed. This Report is available at www.oipc.sk.ca under *Reports.*

Saskatoon Disclosure Of Building Permit Data Is Lawful

In Investigation Report LA-2005-003 the OIPC determined that the long-standing practice of the City of Saskatoon of disclosing certain information about building permits is consistent with the requirements of *The Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). A complaint about this practice was held to be not well-founded. This Report is available at www.oipc.sk.ca under *Reports.*

When To Raise An Exemption Under FOIP

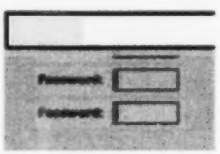
Just a reminder that if you are a FOIP Coordinator for a Saskatchewan public body, it is important when you first respond to someone seeking access to records you should claim all of the discretionary exemptions that you believe should apply. In a Federal Court of Appeal decision, the court stated

> *"I recognize that the case law suggests that a government institution ought to claim the relevant exemptions at the initial stage; at least insofar as non-mandatory exemptions are concerned (see Davidson v. Canada [1989] 2 F.C. 341 and Canada (Information Commissioner) v. Canada (Minister of National Defence), [1999] F.C.J. No. 522 (Q.L.))"*

An Ontario Inquiry Officer addressed the same issue as follows:

> *"In Order P-658, I explained why the prompt identification of discretionary exemptions is necessary to maintain the integrity of the appeals process. I indicated that, unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement..."* [Ontario Order P-1001, page 5]

SaskTel Provides Helpful Tips On Creating Strong Passwords



In order to ensure customer, client and employee personal information are secure from unauthorized access, passwords and user IDs are a necessity. Thinking of a quick password may be easy. However, if something far more complex is required, remembering often proves challenging. The easiest passwords are not always optimal because they are predictable and easy to guess such as a spouse's name or family member's birthday. To assist in creating a password that is not easy to guess, but will also be easy to remember, we suggest you visit SaskTel's website: http://help.sasknet.com/security/security.pwd.php. This site offers valuable tips on how to create a secure password including how to make a password that is easy to remember by incorporating the use of acronyms. Also provided is advice on how to protect your password such as, "*Do not leave your password near your computer.*" All the security in the world doesn't matter if your username and password is on a sticky note under your keyboard.

British Columbia Commissioner Reappointed

The B.C. Legislative Assembly has reappointed David Loukidelis to a further six-year term as Information and Privacy Commissioner. This is very welcome news since Commissioner Loukidelis has been very helpful to our Saskatchewan Office of the Information and Privacy Commissioner (OIPC).

Vancouver Raises The Bar For Municipal Openness

In October, Vancouver became the first municipality in B.C. to post online nomination and disclosure forms for all of its election candidates. The city also intends to publish future disclosure statements on its website. These nomination and disclosure forms included the names, addresses, corporate interests and sources of remuneration of candidates. These changes were recommended by former B.C. Supreme Court Justice Thomas Berger in a report on electoral reform that was adopted by Vancouver City Council in 2004.

Ontario Medical Files Blowing In The Wind

In October, patient health records were being blown around the streets of downtown Toronto. It turns out that a film production company had obtained paper from a recycling company to use as a prop. Ontario Commissioner Ann Cavoukian undertook what was the first investigation under the new Ontario *Personal Health Information Protection Act*. The focus was on the security of the personal health information that had initially been under the control of a Toronto x-ray and ultrasound clinic. In her analysis Commissioner Cavoukian observed that

> *"When it comes to the disposal of personal information, particularly something as sensitive as personal health information, recycling documents or selling intact documents for recycling is not an acceptable option for disposal. To guarantee the protection of personal health information, the information must be physically destroyed in an irreversible manner prior to being disposed of, sold or recycled. To ensure that information is properly disposed of, recognized standards and practices for the physical destruction of information must be followed."*

The Commissioner concluded that the clinic had failed to take reasonable steps to ensure that personal health information in its custody or control was disposed of in a secure manner as required by the Ontario Act. The clinic also failed to ensure that it's agent properly handled personal health information. The Order provides an interesting discussion of how health records should be handled and the role of agents in dealing with personal health information. The Order HO-001 is available at www.ipc.on.ca .

What Does "Advice Or Recommendations" Mean?

The Ontario Court of Appeal has rejected an overly broad interpretation of "*advice*" proposed by government lawyers in interpreting the *Ontario Freedom of Information and Protection of Privacy Act*. The Court preferred the narrower interpretation of "advice" as information that actually "*must relate to a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process...[or] permit the drawing of accurate inferences*" as to a suggested course of action. [Ministry of Transportation v. Cropley; Ont. C.A. Docket: C42061, [19] to [32]].

The Information and Privacy Commissioner in Newfoundland and Labrador has rejected a claim by the Department of Labrador and Aboriginal Affairs that certain records need not be disclosed in response to an access request on the basis of "advice and recommendations". This followed a careful review of previous decisions in Ontario and British Columbia. This report 2005-005 is available at www.oipc.gov.nl.ca. Parenthetically, the Commissioner in that jurisdiction refused to consider discretionary exceptions that were not raised by the public body until after a formal review was commenced.

'Do Not Call' Bill Progresses Through Parliament

John Lawford, counsel for the Public Interest Advocacy Centre, has alerted us to a new development with Canada's Bill C-37, an *Act to Amend the Telecommunications Act* (Do Not Call). Such a law in the U.S. has been hugely popular with consumers. Apparently the Senate Transport and Communications Committee has finished clause-by-clause consideration of the bill. It now goes back to the Senate for a final vote. Will it become law before an anticipated election call? Stay tuned.

More On HIV/AIDS And Privacy

In the November issue of *Health Law in Canada*, there is a topical article entitled *"To What Extent Should a Colleague Be Unnecessarily Exposed to Risks for the Sake of Protecting Patient Privacy: An Ethical Dilemma"*. This article by Kathryn Maccoon appears at page 13 of Volume 26, Number 2.

FOIP Is Not Just Another Law !

Canadian courts have repeatedly said that access to information and privacy laws are special laws since they define fundamental democratic freedoms (right to access public records and have privacy protected). In the words of the Federal Court of Canada,

> "[the government institution] *has an obligation under* [federal *Access to Information Act*] *to provide access to information to requesting third parties, unless certain statutory* [exemptions] *come into play. And this right to access information has been held to be very important, indeed quasi-constitutional, and therefore not be readily interfered with."* (Natural International Inc. v. Minister of Fisheries and Oceans, No. T-787-04, Federal Court, Mar. 23)

If you contact our office at (306) 787-8350 or webmaster@oipc.sk.ca we can provide a list of other Canadian court decisions that reinforce that statement including decisions of the Supreme Court of Canada.

Use Of Black-Box Recorder In Car Upheld In Alberta

A contract Portfolio Officer for the Alberta IPC released an investigation report in November that dealt with an employer's use of a black box recorder in a privately owned vehicle and using the data to terminate the employees. This report focuses on the Alberta *Personal Information Protection Act.* [Saskatchewan has no equivalent statute] This report is available at www.oipc.ab.ca as Investigation Report P2005-IR-009.

International Biometric Advisory Council

The Council was announced on November 15, 2005. It will provide advice and expert opinion to the European Biometrics Forum, members and partners on the most pertinent issues facing biometrics globally. The hope is that this Council, which includes Dr. Ann Cavoukian, Ontario Information and Privacy Commissioner, will provide advice and clarity with respect to the use of biometrics throughout Europe.

Future Events

November 29, 2005 -- Building Bridges on ICANN's Whois Questions, Vancouver; (KathrynKl@aol.com for details)

November 30, 2005 -- Electronic Health Information and Privacy Conference, Ottawa; (www.ocri.ca/ehip/ for details)

December 4-7, 2005 -- Conference on Governmental Ethics Laws (COGEL), Boston; (www.cogel.org for details)

December 6-7, 2005 -- Privacy and Security in Government Customer Service, Toronto; (www.federatedpress.com/pdf/FPress_PrivacySecurity_1205.pdf for details)

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